

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 4th day of August, 2008, between Owner(s) 17th and 10th Associates LLC, having an office at c/o Related Companies, 60 Columbus Circle, New York, NY (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located at the address of 440-452 West 17th Street, 445-459 West 16th Street, 96-108 Tenth Avenue in the City of New York, New York County, New York, known and designated on the tax map of the Borough of Manhattan as tax map parcel ,Section 3 Block 714 Lot 1, being the same as that property conveyed to Grantor by deed on June 02, 2004, recorded on July 30, 2004, in the Land Records of the Office of the Register of the City of New York in **City Register File No. (CRFN): 2004000469090** of Deeds, comprised of approximately **1.213 acres**, and hereinafter more fully described in Schedule "A" attached hereto and made a part hereof (the " Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of the **Brownfield Cleanup Agreement (BCA) No.: C-231040, Contract No.: W2-1034-04-11 dated January 27, 2005, by and between 17th and 10th Associates LLC, solely owned by 17th and 10th Mezz Associates LLC, solely owned by 17th and 10th Associates Holdings LLC of which Related 17th and 10th Associates LLC is the Managing Member** and the Department, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. **Purposes.** Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. **Institutional and Engineering Controls.** The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for **restricted residential and commercial** use as long as the following long-term engineering controls are employed:

1. All Engineering Controls must be operated and maintained as specified in the SMP
2. All Engineering Controls on the Controlled Property (the Site) must be inspected and certified at a frequency and in a manner defined in the SMP;
3. Groundwater, soil vapor, and other environmental or public health monitoring must be performed as defined in the SMP;
4. Data and information pertinent to Site Management for the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
5. On-Site environmental monitoring devices, including but not limited to groundwater monitoring wells and soil vapor probes must be protected and replaced as necessary to ensure continued functioning in the manner specified in the SMP. There are currently no on-site environmental monitoring devices at this Site.

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6. Compliance with this Environmental Easement by the Grantor and the Grantor's successors and adherence to all elements of the SMP is required;
 7. A composite cover system consisting of a concrete building foundation at OU1, a concrete slab at OU2, and a vapor barrier beneath OU1 and OU2 must be inspected, certified and maintained as required in the SMP;
 8. The Sub-Slab Depressurization System under building structures in OU2, must be inspected, certified, operated and maintained as required by the SMP;
 9. Positive pressure must be maintained in the occupied areas of the subgrade level.
 10. Engineering Controls may not be discontinued without an amendment or extinguishment of the Environmental Easement.

The Controlled Property has a series of Institutional Controls in the form of Site restrictions. Adherence to these Institutional Controls is required under the Environmental Easement. Site restrictions that apply to the Controlled Property are:

1. Vegetable gardens and farming on the Controlled Property are prohibited;
2. Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended use. Approval by the New York State Department of Health must be obtained prior to such intended use;
3. All future activities on the Controlled Property that will disturb residual contaminated material are prohibited unless they are conducted in accordance with the soil management provisions in the SMP;
4. The Controlled Property may be used for restricted residential and commercial use only provided the long-term Engineering and Institutional Controls included in the SMP remain in use.
5. Grantor shall provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan that the Department has approved for the Controlled Property and all Department-approved amendments to that Site Management Plan.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November, 2007 ("SMP"). The SMP describes obligations that Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and

remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:
Region 2
NYS DEC
One Hunter's Plaza
47-40 21st Street
Long Island City, NY 11101

or Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as **unrestricted residential** use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the

Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:
County, NYSDEC Site Number, NYSDEC Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Environmental Easement Attorney
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-1500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the

recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name: 17th and 10th Associates LLC
By: 17th and 10th Mezz Associates LLC, its sole member
By: 17th and 10th Associates Holdings LLC, its sole member
By: Related 17th and 10th Associates LLC, its managing member

By: 
Title: Authorized Signatory Date: 6/19/08

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation

by: 
Alexander B. Grannis, Commissioner

Grantor's Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF NY)

On the 19 day of June, in the year 2008, before me, the undersigned, personally appeared Sergey Goshin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public - State of New York

Pearl Bultron
Notary Public, State of New York
#01BU6114488
Qualified in Queens County
My Commission Expires August 16, 2008

Grantee's Acknowledgment

STATE OF NEW YORK)

) ss:

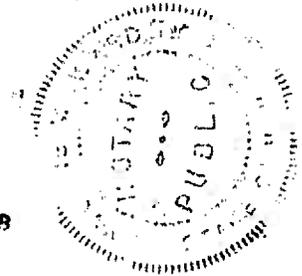
COUNTY OF ALBANY)

On the 4th day of August, in the year 2008, before me, the undersigned, personally appeared ALEXANDER B. GRANNIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public - State of New York

Yvonne M. Ward
Notary Public - State of New York
No. 02WAB115685
Qualified in Saratoga County
My Commission Expires Sept. 13, 2008

SEAL



SEAL

Schedule "A" Property Description

All that Certain plot, piece or parcel of land, situate lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows,

Beginning at a point of the easterly side of 10th Avenue, at a point distant 23 feet 3 inches southerly from the corner formed by the intersection of the southerly side of West 17th Street and the easterly side of 10th Avenue,

Running thence easterly parallel with West 17th Street 100 feet to a point,

Thence northerly parallel with 10th Avenue, 23 feet 3 inches to the southerly side of West 17th Street,

Thence easterly along the southerly side of West 17th Street, 200 feet,

Thence southerly parallel with 10th Avenue, 184 feet to the northerly side of West 16th Street,

Thence westerly along the northerly side of West 16th Street, 300 feet to the easterly side of 10th Avenue,

Thence northerly along the easterly side of 10th Avenue, 160 feet 9 inches to the point or place of beginning

Containing 1.213 acres (52875 square feet)

CONTRACTORS' LINE & GRADE SOUTH, LLC

SINCE 1973

9 NORTH GOODWIN AVENUE, SUITE 3
ELMSFORD, NEW YORK 10523-3133
914.347.3141 • FAX 914.347.3120
LINEANDGRADE@OPTONLINE.NET

JOHN DeMARIO, PARTNER
GARY ENNIS, PARTNER



NOT AFFILIATED WITH ANY OTHER
LINE AND GRADE COMPANY

Schedule A Description
Operating Unit 1

All that plot, piece or parcel of land situate, lying and being in the borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point being distant 82.36 feet easterly from the intersection formed by the easterly side of 10th Avenue and the northerly side of West 16th Street;

THENCE northerly parallel to 10th Avenue, 6.12 feet;

THENCE westerly parallel to West 16th Street, 17.32 feet;

THENCE northerly parallel to 10th Avenue, 9.64 feet;

THENCE westerly parallel to West 16th Street, 19.70 feet;

THENCE northerly parallel to 10th Avenue, 22.06 feet;

THENCE westerly parallel to West 16th Street, 19.74 feet;

THENCE northerly parallel to 10th Avenue, 79.54 feet;

THENCE westerly parallel to West 16th Street, 25.60 feet;

THENCE northerly along the easterly side of 10th Avenue 43.39 feet;

THENCE easterly parallel to West 16th Street, 100.00 feet;

THENCE northerly parallel to 10th Avenue, 23.25 feet;

THENCE easterly along the southerly side of West 17th Street, 200.00 feet;

THENCE southerly parallel to 10th Avenue, 184.00 feet;

THENCE westerly along the northerly side of West 16th Street, 217.64 feet to the point and place of BEGINNING.

CONTRACTORS' LINE & GRADE SOUTH, LLC



SINCE 1973

9 NORTH GOODWIN AVENUE, SUITE 3
ELMSFORD, NEW YORK 10523-3133
914.347.3141 • FAX 914.347.3128
LINEANDGRADE@OPTONLINE.NET

JOHN DeMARIO, PARTNER
GARY ENNIS, PARTNER

NOT AFFILIATED WITH ANY OTHER
LINE AND GRADE COMPANY

Schedule A Description
Operating Unit 2

All that plot, piece or parcel of land situate, lying and being in the borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of 10th Avenue and the northerly side of West 16th Street;

THENCE northerly along the easterly side of 10th Avenue, 117.36 feet;

THENCE easterly parallel to West 16th Street, 25.60 feet;

THENCE southerly parallel to 10th Avenue, 79.54 feet;

THENCE easterly parallel to West 16th Street, 19.74 feet;

THENCE southerly parallel to 10th Avenue, 22.06 feet;

THENCE easterly parallel to West 16th Street, 19.70 feet;

THENCE southerly parallel to 10th Avenue, 9.64 feet;

THENCE easterly parallel to West 16th Street, 17.32 feet;

THENCE southerly parallel to 10th Avenue, 6.12 feet;

THENCE westerly along the northerly side of West 16th Street, 82.36 feet to the point and place of BEGINNING.

SURVEY

